

DEPARTMENT OF STATE REVENUE

04-20100047P.LOF

Letter of Findings Number: 10-0047P
Negligence Penalty
For the Years 2004, 2005, 2006, 2007

Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Tax Administration – Negligence Penalty.**

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use tax compliance for the years 2004, 2005, 2006, and 2007. The Department's audit assessed additional sales and use tax, penalty and interest for the years at issue. Taxpayer paid the proposed assessment and interest, but protested the penalty.

The Department sent Taxpayer a letter dated January 13, 2010, acknowledging receipt of Taxpayer's protest and providing Taxpayer with the opportunity to present additional documentation and/or request a hearing on the protest within 20 days of the date of the letter. Taxpayer did not present additional documentation, nor did Taxpayer request a hearing, therefore this Letter of Findings is written based on the information in Taxpayer's protest file.

I. Tax Administration – Negligence Penalty.**DISCUSSION**

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Apart from its plain request for waiver of penalty, Taxpayer has not provided any explanation or documentation to show that it had reasonable cause in underpaying sales and use tax. Taxpayer, therefore, has not met its burden to show that it was not negligent.

FINDING

Taxpayer's protest is respectively denied.

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